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WALL STREET: SECURITY RISK. By Hurd Baruch. Washington, D.C.: Acropolis Books Ltd. 1971. Pp. 356. $8.95. The great stock market crash of October, 1929 still rings in the American psyche. In addition to launching the Depression, it propagated the most pervasive regulatory legislation ever directed toward a single industry. Congress — acting as usual in the public interest after all else had failed — enacted six separate statutes between 1933 and 1940 which regulate every aspect of the securities industry from issuers to investment advisors. One of the more novel concepts embodied in the legislation is the self-regulation of the brokerage industry by the national exchanges and professional organizations. These regulators were given the task of promulgating and enforcing internal regulations under the supervision of the embryonic Securities and Exchange Commission. In *Wall Street: Security Risk*, Hurd Baruch explodes the myth of self-regulation. Using the 1969-70 financial crisis on Wall Street — which saw over 100 brokerage firms fail — as a focal point for his discussion, the author charges the New York Stock Exchange (NYSE) with gross misfeasance in its role as a regulatory body.

As Special Counsel in the Division of Trading and Markets of the SEC, Mr. Baruch had first hand experience with the Exchange throughout the recent crisis. Exercising astonishing restraint, he has limited the scope of his inquiry solely to publicly available information. Nevertheless, Mr. Baruch's expertise in locating and interpreting this data is more than sufficient to indict the entire securities industry, and especially the NYSE.

The indictment of the securities industry contains four counts: the continuing use and misuse of customers' funds and securities left on deposit with brokers; the securities industry's inability to process customers' orders promptly and accurately during the record trading volume of 1967-68; the unnecessary financial crisis of 1969-70, which saw the failure of over 100 NYSE firms with the consequent loss to hundreds of thousands of customers through the freezing of their accounts; and the non-functioning of the self-regulatory system throughout the entire period. The indictment of the NYSE is even more devastating. Mr. Baruch charges that: (1) during the 1960's the Exchange strove to increase trading volume without improving its transaction processing procedures either on an individual or industry-wide basis; (2) the Exchange failed to recognize the gravity of the operational problems of its membership in 1968 which eventually led many brokers to bankruptcy; (3) suggestions by the SEC for industry-wide measures to curtail the rising volume of trading were repeatedly rejected by the Exchange; (4) after trading volume declined in 1969, the Exchange refused to require its members to expedite their bookkeeping backlog and refused to recognize SEC warnings of the impending financial crisis; (5) the Exchange strove to perpetuate the system by which member brokers obtained working capital through the misuse of customers' funds and securities; (6) the Exchange misinformed the investing public, its own membership and even Congress about the magnitude of the financial problems of its members during 1969-70; (7) the Exchange failed to regulate the capital balances of its members and blocked SEC efforts to do so; and (8) the Exchange has for almost two hundred years maintained a monopolistic price structure for its members, refusing to allow the very competition upon which its fortunes were built.

Mr. Baruch makes several specific proposals to remedy the current situa-

tion. He suggests first that the SEC promulgate stringent regulations governing brokers' use of customers' funds and securities. Second, the SEC should stop allowing the Exchange to supervise the net capital requirement of its members and take over the regulation itself. Third, a broad and effective monitoring program should be implemented to detect financial problems of brokers long before investors are injured. Fourth, the trading of all securities should be immediately computerized. This would avoid the devastating paperwork backlog that contributed to the downfall of many brokers. Finally, the NYSE should be required to abandon its fixed rate structure and allow its members to engage in free competition. One of the most appealing aspects of Mr. Baruch's suggestions is that they may be implemented through minor changes in existing legislation and regulations.

This book has been written to inform the investing public of the inadequacies of the brokerage community with a view toward influencing legislation which would bring about reform. Despite the magnitude of his charges, Mr. Baruch's presentation is scholarly and for the most part objective. Of particular value is the appendix which gives the investor a short course on how to obtain and interpret his broker's Form X-17a-5 — a somewhat obscure, but thoroughly detailed questionnaire — in order to evaluate the safety of his investments. The book is essential reading for every investor and, in addition, may be profitably read by anyone else seeking to gain valuable insight into the Wall Street financial community.

JUDICIAL REVIEW IN THE CONTEMPORARY WORLD. By Mauro Cappelletti. Indianapolis: Bobbs-Merrill. 1971. Pp. vii, 120. $8.50. Few institutions reveal the temper of our times as clearly as the judicial review of the constitutionality of legislation. Once peculiar to a few common law countries, it is now finding adoption in predominantly civil law countries. In this comparative analysis, Professor Cappelletti analyzes the background and rationale of this trend, and in so doing not only demonstrates the functional importance of comparative law but also casts a refreshing and revealing light on our existing judicial institutions. Funded through a grant from the Italian National Research Council, the book is an expanded version of a series of lectures given by the author in 1965 at the National University of Mexico and of later seminars conducted at various universities in Italy, France, Austria and the United States.

Professor Cappelletti is known throughout the world for his expertise in comparative law. His works have appeared in many countries with translations of this particular work available in Spanish and Italian. Professor Cappelletti is currently a Professor of Law at Stanford University and Professor of Law and Director of the Institute of Comparative Law at the University of Florence.

In tracing the historical development of judicial review from its origin in the United States to its spread throughout Europe, Professor Cappelletti points out that the basic motif of judicial review is a product of our Western heritage. The variations from country to country arise inevitably from differences in both experience and outlook while subtleties arise simply from the ambiguous nature of judicial review in any democratic state. The underlying theme of this constitutionalism is identified as the embodiment of natural law principles in the positive law of the state. While medieval Europe recognized the concept of civil disobedience of an unjust law, it remained for modern times to develop instruments to protect fundamental principles. Professor Cappelletti identifies the French Revolution as the beginning of a

schism in this area. The Americans, clinging to older concepts of subordination of natural law to higher law, set down these ideas in a written constitution to be interpreted and applied by judges. Continental Europe, on the other hand, viewed the popular legislature as the best guarantor of universal values. Under this view, the legislature was given the duty of codifying all law and other institutions were created to insure the conformity of state action to the codes.

According to Professor Cappelletti the devastating experience in the first half of this century brought about the return of European jurisprudential thought to American concepts of judicial review. The discovery that the legislature could be the source of racial persecution and other injustices produced the feeling that fundamental principles should be embodied in a document difficult to amend, and interpreted by an independent judiciary.

Although civil and common law countries are now following similar ideas of constitutionalism, Professor Cappelletti points out that there are differences in approach to judicial review which remain as vestiges of past divergence. The United States and countries following its example strive to confine judicial review within the traditional judicial framework, the political nature of the institution being disguised wherever possible. Conversely, the civil law countries, with their specially appointed courts and special procedures to focus directly on statutes rather than cases, take a franker view of the whole process. And yet paradoxically, the elaborate fictions of the American judges may well allow them to perform their political functions much less dangerously than their European brethren.

Professor Cappelletti concludes that the most important factor within the institution of judicial review is the breakdown of the old dichotomies caused largely by the application of conflicting labels to the American and Continental processes. In support of his conclusion, Professor Cappelletti points to the continuing dialogue by constitutional lawyers on both sides of the Atlantic concerning the dangers, or advantages, of judicial activism, the creative aspect of judicial interpretation, and of the rights of the accused. Insofar as judicial review has encouraged this convergence, he feels it has further justified itself.

Though the book is written primarily for the student, its thorough documentation makes it a valuable research tool for anyone interested in comparative law. Professor Cappelletti is to be commended for his lucid study of this important judicial institution.